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In the Supreme Court of the United States

Case No. 584

JAMES QUENTIN ANDERSON, Petitioner,

v.

C. T. GLADDEN, Warden, Oregon State Penitentiary, Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

ROBERT Y. THORNTON
Attorney General of Oregon

HAROLD W. ADAMS
Assistant Attorney General
Attorneys for Respondent
Supreme Court Building
Salem, Oregon

JAMES QUENTIN ANDERSON
2605 State Street
Salem, Oregon
In propria persona

SUBJECT INDEX

I	Single Question Presented	1
II	Statement of the Case	1
III	Argument	2-6
IV	Conclusion	6

INDEX OF CASES

Anderson v. Britton, 212 Or. 1, 20, 318 P. (2d) 291; cert. den. 356 U.S. 962, 78 S. Ct. 999, 2 L. Ed. (2d) 1068 — 2, 6

Anderson v. Gladden, Ninth Circuit Court of Appeals, Opinion No. 17,188, July 7, 1961 (Appendix A, Petition, at p. 6) — 1

Guttman v. United States, 85 U.S. 816, 13 Wall 84, 21 L. Ed. 816 — 3

Matter of Heff, 197 U.S. 488, 499, 25 S. Ct. 506, 49 L. Ed. 848 — 3

Sperry Oil and Gas Co. v. Chisholm, 264 U.S. 488, 44 S. Ct. 372, 68 L. Ed. 803 — 3

Surplus Trading Co. v. Cook, 281 U.S. 647, 50 S. Ct. 455, 74 L. Ed. 1091 — 5, 6

United States v. Barnhart, 10 Sawyer 491, 496 — 5

United States v. Seveloff, 2 Sawyer 311 — 4

United States v. Thomas, 151 U.S. 577, 14 S. Ct. 426, 38 L. Ed. 276 — 5

United States v. Tom, 1 Or. 27 — 4

Worcester v. The State of Georgia, 6 Pet. 512, 592, 8 L. Ed. 483 — 3

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I

SINGLE QUESTION PRESENTED

Inherently, and as an attribute of sovereignty, the State of Oregon had and has criminal jurisdiction over James Quentin Anderson. There is therefore no occasion for further determination of this fact by the federal courts.

II

STATEMENT OF THE CASE

On the issue raised here, petitioner's statement of the case, citations of the opinions below and statutes involved are considered to be sufficient.

III

ARGUMENT

The issues presented in the petition for writ of certiorari are not ones falling within the ambit of 21 U.S.C. 2241 nor ones entailing the considerations outlined in Rule 19.

The position of the State of Oregon is stated fully in the case of *Anderson v. Britton*, 212 Or. 1, 318 P. (2d) 291. Therein, the Oregon Supreme Court stated at p. 20:

> "* * * the inherent police power of the states applies both to Indians and to Indian country, except to the extent that the federal government has preempted the field. It follows therefore that the federal government may withdraw from the field, and turn the subject matter back to the states, when it chooses to do so."

That this coexistence of sovereign jurisdiction has always existed is demonstrated by the concurring opinion of Justice M'Lean, in the case of *Worcester v. The State of Georgia*, 6 Pet. 512, 8 L. Ed. 483, at page 592:

> "* * * But, if a contingency shall occur which shall render the Indians who reside in a State incapable of self-government, either by moral degradation or a reduction of their numbers, it would undoubtedly be in the power of a State government to extend to them the aegis of its laws. Under such circumstances, the agency of the general government, of necessity, must cease.
>
> "But, if it shall be the policy of the government to withdraw its protection from the Indians who reside within the limits of the respective States, and who not only claim the right of self-government

but have uniformly exercised it; the laws and treaties which impose duties and obligations on the general government should be abrogated by the powers competent to do so. * * *"

And, in a quotation from the case of *Guttman v. United States*, 85 U.S. 816, 13 Wall 84, 21 L. Ed. 816, the following statement appears:

"* * * The Indian tribes and individuals are subject to the laws of the United States, and of the states in which they are located. *The Cherokee Tobacco.* 11 Wall 619, 20 L. ed. 228. * * *"

The validity of these prescient expressions is demonstrated fully in the case of *Matter of Heff*, 197 U.S. 488, 25 S. Ct. 506, 49 L. Ed. 848, at page 499. Justice Brewer, delivering the opinion of the court stated:

"Of late years a new policy has found expression in the legislation of Congress—a policy which looks to the breaking up of tribal relations, the establishing of the separate Indians in individual homes, free from national guardianship and charged with all the rights and obligations of citizens of the United States. Of the power of the Government to carry out this policy there can be no doubt. It is under no constitutional obligation to perpetually continue the relationship of guardian and ward. It may at any time abandon its guardianship and leave the ward to assume and be subject to all the privileges and burdens of one *sui juris*. And it is for Congress to determine when and how that relationship of guardianship shall be abandoned. It is not within the power of the courts to overrule the judgment of Congress. It is true there may be a presumption that no radical departure is intended, and courts may wisely insist that the purpose of Congress be

made clear by its legislation, but when that purpose is made clear the question is at an end."

The Ninth Circuit Court of Appeals states in its opinion in *Anderson v. Gladden*, No. 17,188, July 7, 1961 (Appendix A, Petition, at p. 6):

"In unambiguous terms, Public Law 280 withdrew federal jurisdiction over offenses committed in specified areas of Indian country by the grant of exclusive criminal jurisdiction therein of five designated states. Oregon is one of them, and 'all Indian country within the state, except the Warm Springs Reservation' is placed under the state's jurisdiction.

"In our view, this unambiguous statutory language is not obscured because Congress in the following year enacted legislation which provided comprehensive procedures for the termination of federal supervision over the property of the Klamath Indian Tribe and its members and for the termination of federal services furnished such Indians because of their status as Indians. Act of August 13, 1954, 68 Stat. 718, 25 U.S.C.A. §§ 564-64w-1."

The sovereignty of a state or territory has, wherever not in conflict with the exercise of a paramount power of the Federal Government, been the basis of the exercise of criminal jurisdiction over Indians. Thus, in *United States v. Seveloff*, 2 Sawyer 311, Judge Deady pointed out:

"In 1853 the Supreme Court of the Territory of Oregon in *United States v. Tom*, 1 Or. 27, held that the Act of 1834 was not in force to the westward of the Rocky Mountains until specially extended over the Territory of Oregon by the Act of 1850."

In so holding, the territorial court overruled a motion to quash the indictment and allowed the prosecution in territorial court, of "Tom, an Indian" for selling liquor to other Indians, *United States v. Tom*, 1 Or. 27.

Judge Deady continuously recognized that the State would have competent jurisdiction save for the interposition of paramount federal authority. This is perhaps best demonstrated by the case of *United States v. Barnhart*, 10 Sawyer 491, at p. 496:

> "In *United States v. Martin*, 8 Saw. 478, it is 'conceded that the admission of Oregon into the Union upon an equality with the other states, without any special reservation of jurisdiction over the place then known and occupied as the Umatilla Indian reservation, extended the jurisdiction of the state thereover, as to all subjects constitutionally within its power of legislation—such as a crime committed thereon by one white man upon another, and it may be by one Indian upon another.'
>
> "But as this subject of the intercourse between the white man and the Indian is committed by the constitution to the government of the United States, and as congress has provided for the punishment of a white man for the felonious killing of an Indian upon this reservation, the *vice versa*, it is not admitted that the state has any authority over such killing, or power to punish or absolve the person committing the same."

The recognition of the dual sovereignty which actually existed continued to be acknowledged through the years by the following cases, amongst others: *United States v. Thomas*, 151 U.S. 577, 585, 14 S. Ct. 426, 38 L. Ed. 276; *Sperry Oil and Gas Co. v. Chisholm*, 264 U.S. 488, 497, 44 S. Ct. 372, 68 L. Ed. 803; *Surplus*

Trading Co. v. Cook, 281 U.S. 647, 650, 50 S. Ct. 455, 74 L. Ed. 1091.

The definition of this question as a state question by the Ninth Circuit Court of Appeals is accurate. Petitioner does not raise properly any issues as to the validity of the federal congressional pronouncement which withdrew the Federal Government from the field of jurisdiction over Indians, in Oregon.

IV

CONCLUSION

The petition for writ of certiorari should be denied, as was that following *Anderson v. Britton*, 212 Or. 1, 318 P. (2d) 291; cert. den. 356 U.S. 962, 78 S. Ct. 999, 2 L. Ed. (2d) 1068.

Respectfully submitted,

ROBERT Y. THORNTON
Attorney General of Oregon

HAROLD W. ADAMS
Assistant Attorney General
Attorneys for Respondent